

**VIRGINIA DEPARTMENT OF EDUCATION  
DIVISION OF SPECIAL EDUCATION AND STUDENT SERVICES  
OFFICE OF DISPUTE RESOLUTION AND ADMINISTRATIVE SERVICES**

**NOTICE OF COMPLAINT**

<b>School Division</b> Fairfax County Public Schools Dr. Michelle Boyd, Assistant Superintendent, Special Services Ms. Dawn Schaefer, Director, Special Education Procedural Support 8270 Willow Oaks Corporate Drive - Second Floor Fairfax, Virginia 22031 <a href="mailto:mboyd@fcps.edu">mboyd@fcps.edu</a> <a href="mailto:DMSchaefer@fcps.edu">DMSchaefer@fcps.edu</a>	<b>Parent</b> Systemic Complaint – Team Composition
	<b>Student</b> Systemic Complaint REDACTED
<b>Date Complaint Received</b> May 2, 2023	<b>Complainant (if other than parent)</b> Ms. Callie Oettinger REDACTED
<b>Notice of Complaint Date</b> May 11, 2023	<b>Findings Due Date</b> July 1, 2023
<b>Early Resolution Date/LEA Response Due Date</b> May 25, 2023	<b>Additional Information Due Date</b> June 8, 2023
<b>Complaints Department Phone #</b> (804) 225-2013	

The Office of Dispute Resolution and Administrative Services in the Virginia Department of Education (VDOE) has received a complaint alleging that Fairfax County Public Schools (FCPS or “LEA”) has violated federal and state laws and regulations governing special education programs. This notice of complaint gives official notice to all parties that a formal written complaint has been filed with our office and confirms that it is sufficient pursuant to federal special education regulations.

**APPLICABLE REGULATIONS**

This office will base its investigation and findings on the reauthorization of the federal Individuals with Disabilities Education Improvement Act, December 3, 2004 (IDEA '04), its implementing federal regulations, adopted October 13, 2006 (the 2006 implementing regulations), and the

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Regulations Governing Special Education Programs for Children with Disabilities in Virginia, effective on July 7, 2009, and were reissued on January 25, 2010, and on July 29, 2015, (the Virginia Regulations). The Virginia Regulations are available online at:

<https://law.lis.virginia.gov/admincode/title8/agency20/chapter81/>

### **PRELIMINARY NOTE – SCOPE OF INVESTIGATION**

Under 8 VAC 20-81-200(B)(6), a state complaint must allege a violation that occurred no more than one year prior to the filing of the complaint. Some of the allegations included in the narrative below refer to events occurring more than one year prior to the filing of this complaint. These allegations are included only for context and will not be addressed in our findings.

In addition, in her complaint submission, Complainant included information regarding the licensure and endorsement of various specialists who may be involved in the IEP process. This office has no authority to address issues relating to the practice of any profession not regulated by the Virginia Department of Education. Any concerns in this area should be addressed to the appropriate licensing authority.

### **ISSUE(S) AND REGULATIONS:**

#### **1. Individualized Education Program (IEP) – Team Composition.**

Complainant alleges that LEA violated state and federal special education regulations regarding IEP team composition.

More specifically, Complainant alleges that:

- “Specifically, since at least 2017, FCPS has engaged in the following: a) holding IEP meetings that are in noncompliance with IDEA and implementing state regulations; b) unauthorized practice without a license; c) unlicensed “diagnosis and treatment of human physical or mental ailments, conditions, diseases, pain, or infirmities”; d) procedural violation of Parent’s and Student’s opportunity to participate in the decision-making process regarding the provision of FAPE to Student.”
- “A speech-language IEE and a separate auditory processing IEE were administered by Dr. Jay Lucker in July 2020. Dr. Lucker identified areas of deficiency in both.”

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- “Dr. Lucker spoke with the FCPS IEP team in 2020. After he hung up from the call into the meeting, FCPS staff members said they didn’t agree with Dr. Lucker’s findings and wouldn’t be accepting them.”
- “2020-21, 2021-22, and 2022-23 school years: FCPS IEP team members refused to incorporate data from Dr. Lucker’s into Student’s IEPs and refused to provide the services recommended by Dr. Lucker.”
- “Dr. Lucker is a speech pathologist and audiologist. Although an audiologist attended from time to time, FCPS’s IEP teams between 2020-2023 have not included team members licensed as speech language pathologists or with the credentials to interpret evaluations administered by speech language pathologists or with the credentials to make diagnosis of Students based on data collected during evaluations administered by speech language pathologists.”
- “2020-21, 2021-22, and 2022-23 school years: No member of [REDACTED] IEP teams held a valid license issued by the Board of Audiology and Speech-Language Pathology.”
- “A psychological IEE and a comprehensive neuropsychological evaluation were administered by Dr. William Ling in July 2020. FCPS refused to pay for a comprehensive neuropsychological IEE, so Parent had to pay \$600 out of pocket to Dr. Ling to obtain a comprehensive evaluation. Dr. Ling provided this as a separate report, although he incorporated the portion of the IEE paid for by FCPS into the comprehensive report. Dr. Ling identified numerous areas of weakness, to include reading comprehension. In addition, his findings led him to advise Parent to have Student assessed by a developmental ophthalmologist. (In 2023, FCPS offered to reimburse parent \$600 in response to OCR findings, even though it had always refused reimbursement, and even though OCR’s findings weren’t based on FCPS capping its IEE fees. Hence, it is clear FCPS knows it shouldn’t have been capping its fees.)”
- “December 2020, Student was evaluated by Developmental Ophthalmologist Dr. Tod Davis. Dr. Davis identified numerous areas of deficiency.”
- “2020-21, 2021-22 and 2022-23 school years: FCPS IEP team members used data from evaluations done by Dr. Lucker, Dr. Davis, and Dr. Ling to diagnose Student’s needs. For all evaluations, FCPS IEP team members interpreted the evaluation data and, based on their evaluations, made diagnosis different from those of the doctors. In addition, they refused to incorporate data from the evaluations and provide services recommended by the doctors. For example, Psychologist Dr. Ling diagnosed Student with reading comprehension deficiencies based on the evaluations he was licensed, as a psychologist, to administer. The one exception was school psychologist Tonya Blanchard. Tonya, who was the only one licensed to practice

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school psychology, was repeatedly overruled by non-licensed staff engaging in the practice of school psychology.”

- “Since 2017, the majority of Student’s IEP teams have not included an individual licensed to practice school psychology. Yet, the IEP team members consistently engaged in ‘diagnosis relative to the assessment of intellectual ability, aptitudes, achievement, adjustment, motivation, personality or other psychological attribute.’ Tonya Blanchard was the only IEP team member with the license credentials to interpret Dr. Ling’s evaluations. During both school years she disagreed with FCPS central office staff and with the head of special education at South County High School. Tonya was overruled by the other members, even though none of them had the expertise or licensing to interpret the evaluations.”
- “2022-23 school year: No member of [REDACTED] IEP teams held a valid license to serve as a school psychologist and address 2020 evaluations.”
- “2020-2023: Assistant Principal Jeremiah Caven served on the IEP team, even though he’s not credentialed in special education or 6-12 education, yet purported to have knowledge of both.”
- “2017-2023: Student’s IEP teams have been led by FCPS office of procedural support and due process staff, which is charged with ensuring compliance. Yet, from former director of DPE Jane Strong to current director of DPE, the noncompliance has continued.”
- “2017-2023: FCPS has blamed Parent for IEP process taking a long time, for being difficult, focused too much on the past, etc. 020-2022: Office for Civil Rights found FCPS in noncompliance and cited Parent’s 2020 systemic complaint in its findings. OCR’s 2022 findings against FCPS support that Parent was right for years, yet DPE staff portrayed her as wrong and vilified Parent for insisting on compliance and trying to hold FCPS staff accountable for past and present noncompliance, which is a right of Parent’s. FCPS prohibited Parent’s and Student’s opportunity to participate in the IEP process when FCPS staff repeatedly made decisions that it was not licensed to make and denied FAPE to student.”
- “South County High School sped head Samantha Tolan repeatedly threatens to stop IEP meetings whenever Parent pushes for an answer. In addition, Sam consistently tells Parent that her concerns aren’t on topic and thus won’t be discussed, further prohibiting Parent from engaging in IEP meetings.”
- “4.22.22: FCPS IEP Team refused to listen to the one licensed member of the IEP team: School psychologist Tonya Blanchard. Led, again by DPE staff, FCPS staff refused Student services based on decisions of staff who made diagnosis they were not licensed to make.”

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- “4.22.22 to today: FCPS continues to hold IEP meeting that involve staff engaging in non-licensed practice of medicine, school psychology, and other non-licensed and/or non-credentialed activities. Most recently in regard to Student, this happened 2.10.23, when FCPS’s IEP team again diagnosed Student’s needs even though individuals licensed to make such diagnosis were not in the IEP meeting. Parent called FCPS out on this and FCPS insisted the IEP team it chose is duly constituted. FCPS DPE director Dawn Schaefer attended this meeting, too.”
- “Shira Brothers practiced as an expert in vision impairment-related issues, even though she’s never even held an endorsement in this category. Her endorsements are for school counselor prek-12, elementary education PreK-6, and SPED-Deaf and Hard of Hearing PreK-12, so she wasn’t even endorsed in other areas to engage in decisions related to Student’s evaluations. She was on Student’s IEP team during 2020-21 school year and helmed the denial of vision therapy services to student. Shira did the same during IEP meetings for other FCPS students, too, having done so since at least 2019.”
- “License information for members of Student’s IEP team is attached. The one exception is the 11<sup>th</sup> grade general education English teacher whose name is too common and there are numerous individuals with her name listed in VDOE’s system. However, none of these individuals, either, hold licenses or endorsements to administer, measure, diagnose, or engage in the other unauthorized practices without a license in which her colleagues engaged.”

### Applicable Regulations:

- The implementing regulations for IDEA, at 34 C.F.R. § 300.321(a), (c) and (d) and the Virginia Regulations, at 8 VAC 20-81-110(C)(1)(d) and (e) and (f) state, “The local educational agency shall ensure that the IEP team for each child with a disability includes: d. A representative of the local educational agency who is: (1) Qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities; (2) Knowledgeable about the general education curriculum; and (3) Knowledgeable about the availability of resources of the local education agency. A local educational agency may designate another member of the IEP team to serve simultaneously as the agency representative if the individual meets the above criteria; e. An individual who can interpret the instructional implications of evaluation results. This individual may be a member of the team serving in another capacity, other than the parent of the child; f. At the discretion of the parent or local educational agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel, as appropriate. The determination of knowledge or special expertise of any individual shall be made by the party (parent or local educational agency) who invited the individual to be a member of the team;”

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### **EARLY RESOLUTION REQUIREMENTS:**

Our complaint system has an Early Resolution System that supports both parties working cooperatively to resolve this matter prior to the due date for the school division's response without formal investigation by our office. We believe early resolution will benefit both parties and that it is in the best interest of students. Early resolution may include use of the statewide special education mediation system. We have enclosed a brochure for the complainant that describes mediation that is voluntary on the part of both parties. Both parties are asked to keep our office informed of changes in the status of this complaint.

If this complaint is resolved within the 10-day timeline, the school division must furnish a written response, including the following:

1. A record of contacts with the complainant;
2. A statement of the proposed resolution;
3. A signed statement indicating that the complainant has agreed to the resolution and the details of the resolution.

If the complaint is not resolved, the school division must furnish a written response, including all requested documentation in the areas noted below, by the designated due date, as indicated above. The school division must simultaneously provide a copy of the response, along with all submitted documentation, to the complainant if the complaint was filed by the parent or parents of the student, a student who has reached the age of majority, or their attorney. If the complaint was filed by another individual, the school division must provide a copy of the response and documentation to the complainant only if a release signed by the parent or parents or the student who has reached the age of majority has been provided.

For technical assistance in resolving the complaint, please contact your VDOE Regional School Division Technical Assistance Specialist.

### **INFORMATION/DOCUMENTATION REQUESTED:**

- [ ] A **detailed chronology of events** related to these allegations, including any related documentation;
- [ ] A **narrative statement** regarding each allegation, including a specific statement indicating **whether LEA complied with or violated** regulatory requirements, and any **supporting documentation** (such as **signed administrator or teacher statements, policies, procedures, forms, training materials, email correspondence, and other documents**) or related

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materials outlining LEA's position regarding each allegation, documenting, among other things, LEA's compliance or noncompliance with regard to the issues set forth above;

[ ] Any additional statements, along with any supporting documentation, that LEA deems appropriate for addressing the complaint allegations or, if appropriate, to support the actions taken by LEA in regards to these allegations.

### **TIMELINES FOR RESPONSE AND ADDITIONAL INFORMATION:**

#### **School Division Response Timeline**

Please mail all documentation to our office, so that it is received by **May 25, 2023**, at the following address:

Office of Dispute Resolution and Administrative Services  
Virginia Department of Education  
P. O. Box 2120  
Richmond, Virginia 23218

**ODRAS retains discretion to base its review of LEA's materials on the documentation LEA submitted by the response due date.**

#### **Additional Information that may be submitted by either party**

The complainant and the school division may submit *additional information*, either orally, electronically, by facsimile, or in writing, about the allegations in this complaint. This information must be received by the Office of Dispute Resolution and Administrative Services no later than **June 8, 2023**.

**The parties are instructed to copy all response and additional information submissions to each other. Information and/or materials submitted after this date will not be considered by this office, unless specifically requested by the compliance specialist for the purposes of clarification.**

/stg

Attachments - Complaint Resolution Procedures  
Complaint  
Mediation Brochure